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MINIMUM WAGE LAW

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## SUBPART A: GENERAL PROVISIONS

### Section 210.115 Joint Employers

a) Two or more employers may be associated with each other in relation to an individual employee in such a way that they jointly employ that individual under the Illinois Minimum Wage Law (the "Act"). If the facts establish that the worker is employed jointly by two or more employers, all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the Act. In this event, all joint employers shall be jointly and severally liable for any violation of the Act.

b) The following factors provide guidance on whether a joint employment relationship exists in a particular case:

1) The employee's work is to the benefit of the alleged joint employer;

2) The work performed by the employee is an integral part of the alleged joint employer's business or businesses;

3) The alleged joint employer has direct or indirect control or influence over the employee's terms or conditions of employment, including the employee's schedule and the quality of the employee's work;

4) The alleged joint employer owns or leases the premises where the work is performed or provides tools or materials used by employees to perform the work;

5) The alleged joint employer has direct or indirect control over the other joint employer's or employers' operations through contractual obligations, shared joint management, direct or indirect ownership interest, or economic dependence.

c) Whether a joint employment relationship exists depends on all the facts of the particular case. The inquiry should consist of looking at the actual relationship between the employee and the employers, including the employers' ability to exercise control over the employee either directly or indirectly. No one factor is dispositive in the determination of joint employment. For example, a joint employment relationship may still exist when only two of the five factors in subsection (b) indicate the existence of a joint employment relationship.

d) If all the relevant facts based on the five factors establish that two or more employers are acting in a manner that is substantially independent of each other, and are completely disassociated with respect to the employment of a particular employee who, during the same workweek, performs work for more than one employer, each employer may disregard all work performed by the employee for the other employer or employers in determining its own responsibilities under the Act.

e) Examples

1) Example 1

A) Trucking Company enters into a written agreement with Supplier to make deliveries to the Supplier's clients. Trucking Company is not a party to the Supplier's agreements with its clients; it only provides trucks and drivers. Supplier requests the number of trucks to fulfill its orders on a weekly basis and the number varies depending upon the orders. Trucking Company hires, disciplines, and dismisses drivers. Trucking Company assigns drivers to Supplier and its other clients on a rotating basis. Drivers establish the routes used to make the deliveries and are responsible for making deliveries in a timely fashion. Trucking Company has other clients.

B) Application

In this example, a joint employer relationship is not formed. Trucking Company hires, assigns, disciplines, and dismisses drivers. Supplier and Trucking Company are independent business entities that do not have any common ownership or shared management. The drivers provide work that is a benefit to the Supplier, but it is not an integral part of its business. Supplier has no direct or indirect control over the terms and conditions of the driver's work, in that it does not dictate the driver's routes or daily schedules.

2) Example 2

A) Company A owns a warehouse. Logistics are an integral part of Company A's business. Company A contracts with Company B, a logistics supplier, to provide logistics labor to the warehouse. To perform this contract, Company B relies on several staffing agencies including Staffing Agency. Workers are employed by Staffing Agency and perform work at the warehouse. Staffing Agency hires and pays the workers. Company A provides on-the-job training, necessary equipment and materials, provides assignments on site, and reserves the right to remove the workers from the work site. Both Company A and Company B supervise the workers' daily tasks and exert control over workers' schedules. The workers have been continuously working at Company A's warehouse, whether through Company B, Staffing Agency or another intermediary, for over a year.

B) Application  
In this example, a joint employer relationship is formed between all the parties. While Staffing Agency hires and pays the workers, Company A exerts substantial control over the workers, provides training, equipment, and materials, can remove the workers from the work site, and exerts control over worker schedules and provides assignments. Company A and B supervise the workers. The workers have been continuously employed at Company A's warehouse regardless of the intermediaries. The work performed by the workers is for the benefit of Company A.

3) Example 3

A) An employee works as a laborer for landscaping Company A and also performs the same type of work for landscaping Company B. The two landscaping companies' managers coordinate the

employee's schedule, assign the employee to various job sites, and generally determine which workers will be on the crews on a given week. Company A and Company B issue separate payroll checks to the employee from separate accounts. The two companies are independently incorporated, however, both companies share the same majority owner. At times, the two companies share tools and equipment used by the workers.

B) Application

In this example, a joint employer relationship is formed. The facts that Company A is incorporated separately from Company B and that each company pays the workers from separate accounts do not insulate them from the joint employer relationship. Here, Company A and Company B share common ownership. The companies share workers, share equipment, coordinate employee schedules, assignments, and determine what crew workers will be on. Functionally, they operate as joint employers.

4) Example 4

The General Contractor for a large building construction project has engaged various subcontractors to complete certain aspects of the job.

A) Example 4A

i) General Contractor enters into a verbal agreement with Subcontractor A to provide general workers for the project. The scope of the work is not defined and changes on a daily basis depending on the General Contractor's needs at the time. The workers report to the job site every day for the duration of the project, and will work on this project until substantial completion. General Contractor provides the tools and materials the workers use and directs the daily tasks and schedules for the workers. Both General Contractor and Subcontractor A supervise the employees' quality of work. General Contractor reserves the right to remove any of Subcontractor A's workers from the project but does not have authority to terminate workers. General Contractor has the right to enforce all reasonable workplace rules, regulations, and address safety issues on the job site.

ii) Application

In this example, a joint employer relationship is formed. The workers perform work solely on the General Contractor's job site and for the General Contractor's benefit. While both the General Contractor and Subcontractor A control the supervision and quality of work, General Contractor maintains all other authority over the project. General Contractor has assumed direct control of the assigning workers to the job site. General Contractor makes the daily work schedule, directs the workers as to the work they are to complete, and the workers are assigned to this project for the duration of the project, making them an integral part of the job. The General Contractor can take disciplinary action by removing workers from the worksite.

B) Example 4B

i) General Contractor has a written agreement with Subcontractor B to perform electrical work on the project. The agreement outlines the scope of work and requires that Subcontractor B maintain certain delineated safety standards. Per the agreement, General Contractor also has the right to address safety issues on the job site. The work requires specialized training, which Subcontractor B has ensured its employees are fully qualified to perform. Electricians employed by Subcontractor B report daily to the project for a discrete period. The electricians may be scheduled by Subcontractor B to be on other project sites during the same day as being on Contractor's project. Subcontractor B coordinates the order and timing of their work with the General Contractor and, although it is not always on the job site, ensures the quality of the work. Subcontractor B provides the electricians with the tools and materials they bring to the job site. The electricians are provided safety requirements by Subcontractor B as outlined in the contract, Subcontractor B monitors for infractions and when infractions occur, Subcontractor B raises those issues with the electricians.

ii) Application

In this example, a joint employer relationship is not formed. While the electrical work performed benefits the General Contractor, it also benefits Subcontractor B's electrical business. Subcontractor B and the General

Contractor are separate business entities. Subcontractor B hires, directs, assigns, and supervises the work of the electricians. General Contractor has no responsibility for the assignment or supervision of the work. General Contractor and Subcontractor B coordinate general scheduling to accommodate the flow of work being done, but the electricians are directed, assigned and scheduled to the project by Subcontractor B. Subcontractor B supplies the equipment, tools, and materials for the job, and is responsible for the quality of the electricians' work. Additionally, Subcontractor B is not economically dependent on the General Contractor, as the electricians are sent to other job sites indicating this project is only one of many for Subcontractor B.

5) Example 5

A) Hospital contracts with Security Company to provide armed and unarmed security guards 24 hours per day, 7 days per week. Security Company hires, trains, and supplies uniforms and equipment for the guards. While this is not the Security Company's only client, it is the largest and accounts for a majority of its annual revenues. Hospital employs a Chief of Security who is responsible for communicating the Hospital's needs to the Security Company. The Hospital Chief of Security holds weekly meetings with the Security Company to approve the guard assignments, staffing levels, individual guard job performance and evaluations, discipline of guards who violate the Hospital's policies, and suggest termination when in the Hospital's best interest. Security Company assigns an area supervisor who checks on the guards once per shift, but the Hospital Chief of Security oversees the guards' work when he is present. He has also given them direction and assigned specific tasks to the guards that are beyond the Security Company contract.

B) Application  
In this example, a joint employer relationship is formed. Security Company and Hospital share direct control over the guards. The Hospital's Chief of Security has significant control and oversight in assignment, supervision, and performance issues, including discipline and termination.



Additionally, there is an element of economic dependence as Hospital is Security Company's biggest client, which suggests additional control by the Hospital of the Security Company.

6) Example 6

A) Customer contacted Home Care Agency about receiving home care services. Home Care Agency met with Customer and determined what services were needed to meet Customer's needs. Home Care Agency, along with Customer, determined the tasks to be performed for Customer and the hours per week required to perform those tasks. Home Care Agency set qualifications, recruited, and hired Home Care Worker. Customer and Customer's wife supervise Home Care Worker on a day-to-day basis, can modify the tasks that Home Care Worker performs, and can modify Home Care Worker's work schedule. Customer or family members of Customer can report issues to Home Care Agency and Home Care Agency intervenes if a problem arises, such as arranging for another home care worker should Home Care Worker become unavailable. Home Care Agency pays the home care worker directly, keeps records of hours worked, and determines the hourly rate of pay for the Home Care Worker. Customer is invoiced by Home Care Agency for the services rendered.

B) Application

In this example, a joint employer relationship is formed between Home Care Agency, Customer, and Customer's wife. Here, Home Care Worker's wages are paid by Home Care Agency and Home Care Agency controls the rate of pay and the method of payment. Customer is invoiced by Home Care Agency. Home Care Agency, Customer, and Customer's wife exercise considerable control over the structure and conditions of Home Care Worker's employment by determining the hours of work and what tasks are to be performed. Customer's wife can raise issues with Home Care Worker's performance with Home Care Agency. Home Care Agency intervenes in issues between Home Care Worker and Customer and/or Customer's wife.

(Source: Added at 46 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)